

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

Kimkhnal, Virak P.,

Debtor

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CHAPTER 7
CASE NO. 1:14-bk-41381

DEBTOR'S EMERGENCY MOTION TO CONTINUE STAY

Now comes Debtor, Virak P. Kimkhnal, in the above noted case, who hereby respectfully requests this Honorable Court, pursuant to 11 U.S.C. 362(c)(3)(B) and Local Rule 4001-1(d), extend the stay of bankruptcy in this case. As reason therefore, Debtor states that she will be irreparably harmed should this Court not grant her motion on an emergency basis.

FACTS

On February 13, 2014, the Debtor in this case filed, *Pro se*, for protection from her creditors under Chapter 7, in case number 1:14-bk-40239. That case was subsequently dismissed for failure to file missing documents on February 21, 2014 and closed on March 28, 2014. No motion for relief from stay was pending or filed in said case at the time of dismissal.

On March 19, 2014, the Debtor filed a civil action action in Massachusetts Superior Court, for the county of Middlesex, against Deutsche Bank National Trust Company (Deutsche Bank), captioned *Kimkhnal v. Deutsche Bank National Trust Company*, C.A. No. 14-1373, alleging wrongful foreclosure due to Debtor's allegations that Deutsche Bank lacked the authority to foreclose the mortgage which had been given by Debtor that is the subject of the action, as they are not a valid assignee of that mortgage. (See: Exhibit 1). Deutsche Bank has

been served, counsel for the Deutsche Bank has entered his appearance, and Deutsche Bank has responded to the complaint with an answer.

In her complaint the Debtor seeks a declaratory judgment that an alleged Assignment of Mortgage, of the her mortgage loan as referenced therein, from New Century Mortgage Corporation (“New Century”), by Carrington Mortgage Services, LLC (“Carrington”), under limited Power of Attorney, Deutsche Bank National Trust Company, as Trustee for, Carrington Mortgage Loan Trust, Series 2005-NC5 is void and that, as a result, Deutsche was not the valid mortgagee at all times relevant to a foreclosure sale of her property which took place on June 29, 2011.

The complaint further alleges that the Mortgage relevant to the facts as stated herein was given by Debtor to The New York Mortgage Company, LLC and no Assignment of said Mortgage exists assigning said Mortgage to New Century in accordance with Massachusetts Law and that the “Assignment of Mortgage” from New Century failed to assign said Mortgage to Deutsche Bank. As such, New Century, having never been assigned said mortgage in accordance with Massachusetts Law, had nothing to assign to Deutsche Bank, and said Assignment is void. Further, Deutsche Bank’s exercise of the statutory power of sale contained in said Mortgage, through Carrington as servicer, subsequent to said void Assignment, was not valid and also void. Moreover, Deutsche Bank’s foreclosure auction, through its servicer, Carrington Mortgage Services, LLC, was also subsequently void.

On June 19, 2014, the Debtor filed this case, represented by counsel, seeking protection from her creditors under Chapter 13, which was voluntarily converted to Chapter 7 on July 21, 2014. Debtor states that she filed this case in good faith seeking the protection of this Court so that she may proceed to trial on the merits of her claims in Massachusetts Superior Court, and if

unsuccessful with respect to said claims, any deficiency that remains owing to Deutsche Bank, may be discharged.

Presently Deutsche Bank National Trust Company, in Massachusetts Housing Court (North East) docket no. 12H77SP003518, is seeking to evict Debtor from her residence, on Wednesday, July 23, 2014, at 10:00 a.m. claiming that Debtor is no longer protected by the automatic stay of bankruptcy pursuant to 11 U.S.C. 362(c)(3)(A).

Debtor believes that she will be irreparably harmed by being evicted and losing her rightful property, should this Court not grant her motion and continue the protection of the stay against Creditor Deutsche Bank National Trust Company for a period of up and until this matter may be heard by this Court, fully briefed and with opposition from said Creditor, if any. As such, she herein seeks this extraordinary emergency relief from this Honorable Court, as requested herein.

WHEREFORE, for good cause shown, Debtor, Virak P. Kimkhmal respectfully requests this Honorable Court, pursuant to 11 U.S.C. 362(c)(3)(B) and Local Rule 4001-1(d), extend the stay of bankruptcy in this case, on an emergency basis, as to Creditor Deutsche Bank National Trust Company, for a period of up and until this matter may be heard by this Court, fully briefed and with opposition from said Creditor, if any.

Dated: July 22, 2014

Respectfully Submitted,
Virak P. Kimkhmal, Debtor,
By her Attorney,

/s/ Todd S. Dion
Todd S. Dion, Esq. (#659109)
1599 Smith Street
North Providence, RI 02911
Telephone: 401-649-4330
Facsimile: 401-649-4331
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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2014, a copy of the foregoing document, filed through the CM/ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies shall be served by first class mail postage prepaid on the following affected parties;

American Express
PO Box 1270
Newark, NJ 07101

National Grid
P.O. Box 11739
Newark, NJ 07101

Deutsche Bank NT Co.
7575 Irvine Center Drive
Irvine, CA 92618

In addition I did serve a copy of this pleading on the Counsel for Deutsche Bank National Trust Company in the Massachusetts Housing Court and Superior Court matters, respectively, as follows, at their email address;

Orlans Moran, PLLC
PO Box 540540
Waltham, MA 02454
Attn. Paulo Franzese, Esq.
pfranzese@orlansmoran.com

Massachusetts Housing Court matter

Shechtman Halperin Savage, LLP
1080 Main St.
Pawtucket, RI 02860
Attn: Dean Wagner, Esq.
dwagner@shslawfirm.com

Massachusetts Superior Court matter

/s/ Todd S. Dion
Todd S. Dion, Esq.